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| 09/945,501 | 08/31/2001 | Glenn Joseph Martyn | | 4265 |
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| Glenn Martyn PETSCAPE, INC. 827 Royalwood Lane Oviedo, FL 32765 | | | | |
| | | | EXAMINER OLSZEWSKI, JOAN M | |
| | | | ART UNIT 3643 | PAPER NUMBER |

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/945,501

Applicant(s)

MARTYN, GLENN JOSEPH

Examiner

Joan M. Olszewski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2003 and 21 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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FINAL REJECTION

This is in response to Applicant's amendments filed June 03, 2003 and November 24, 2003. Currently, claims 1, and 4-7 are pending in this application.

With respect to Applicant's claim for domestic priority under 35 U.S.C. 119(e) based upon a provisional application 60/230,046 filed 09/01/200 is acknowledged.

With respect to Applicant's filing date, a review of the file indicates that figures 11a and 11b submitted on December 4, 2001 were not needed nor did they raise any questions of new matter. Therefore, Applicant's filing date has been changed from December 4, 2001 to August 31, 2001. With respect to the drawing corrections these are considered acceptable by the Examiner however, Applicant is directed to review the attached PTO-948 which shows the problems as identified by the Official Draftsperson for the Office.

With respect to the abstract corrections these are considered acceptable by the Examiner as are the current grammatical and spelling error corrections thus far completed (see further correction requirements below). As for the trademark and title corrections these are considered acceptable by the Examiner as are the claim objections corrections. As for the 35 USC 112 second paragraph corrections these are noted however newly created additional errors have been noted below.

Drawings

New corrected drawings are required in this application because see attached PTO-form PTO-948. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer

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prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: the entire specification continues to have numerous spelling and grammatical errors of which a only a small fraction of examples were previously cited in the past Office Action with the requirement that Applicant review and correct all such type errors throughout the entire specification. This was not completed by Applicant. Therefore, again Applicant is required to review the entire specification for spelling and grammatical errors such as the representative examples given below with the understanding that it is Applicant's responsibility to correct all such errors throughout the entire specification in response to this Office Action. Further, Applicant is reminded that no new matter may be introduced.

Page 1, paragraph 6, line 3 "there" should be -- their --.

Page 1, paragraph 6, line 3 "cats" should be -- cat's --.

Currently amended page 2, line 9 "ware" should be -- wear --.

Further, these paragraphs above and others contain numerous run-on sentences.

Additionally, Applicant due to the deletion of Figures 11A and 11B must remove the numerous reference citations to these figures found throughout the disclosure.

Appropriate correction is required.

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The amendments filed June 3, 2003 and November 24, 2003 are objected to under 35 U.S.C. 132 because they introduce new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

Amended page 1, line 15 "within 2 years";

Amended page 2, first paragraph, line 17 "seven (8) inches";

Amended page 2, first paragraph, lines 20 and 21 "and/or";

Amended page 2, first paragraph, line 2, the term "scoopable" has been deleted changing the original parameters and must be restored.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

Claim 7 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim 7 not been further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5/4 and 6/4 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The original disclosure fails to provide support for

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a real tree having both real and simulated leaves. It is suggested that the dependency of these claims be changed to correct this issue. Specifically, claims 5 and 6 should only depend from claim 1.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4,5,6, and 6/4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 4,

Line 2, the term "said tree is a real" is confusing and thus makes the scope of the claim unclear.

Line 4, it is confusing how "real leaves" are related to "leaves" of claim 1.

Line 4, the term "and /or" is confusing since it makes the scope of the claim uncertain.

Claim 4 recites the limitation "said real tree trunk and/or branches" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Lines 9-10, it is unclear if this is the same as the covering in claim 1 and thus makes the scope of the claim unclear.

Regarding Claim 5,

Lines 3 and 5, the phrase "simulated leaves" is confusing since it is unknown if these are the same leaves as in claim 1, and are the simulated leaves in addition to the real leaves of claim 4, thus making the scope of the claim unclear.

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Claim 5 recites the limitation " said real tree trunk and /or branches " in line 5.

There is insufficient antecedent basis for this limitation in the claim.

Regarding Claim 6/4, this claim sets forth the use of an artificial tree, branches, leaves and bark, while claim 4 recites a real tree, branches and leaves. It is unclear exactly what is being claimed, since the scope of this claim cannot be determined claim 6/4 has not been treated any further on the merits at the present time. Further, in line 5 the phrase "simulated leaves" is confusing since it is unknown if these are in addition or in place of real leaves of claim 4 and in line 7, the phrase "simulated tree bark" is confusing since it is unknown if this is the same bark as in claim 4 and is this the same covering as in claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6/1 are rejected under 35 U.S.C. 102(b) as being anticipated by Lister (US Patent 5,819,687) and as best understood in light of the 35 USC 112 second paragraph rejections above.

Regarding Claims 1 and 6/1, Lister discloses a device capable of being used by cats and other animals as a resting area and scratching post and comprised of: a simulated tree (10); having leaves ((Figure 1) which cats could rub their whiskers against; having a platform (Figure 1) which is flat, horizontal, and elevated above the

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ground in the tree; the platform being of a size large enough for full grown domestic cats to use for perching or laying down upon; and having a rough and hard texture covering the surface (16) of one or more portions of the tree capable of use by cats to scratch their claws on (Figure 1)(column 3, line 9).

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell (US Patent 4,445,591) and as best understood in light of the 35 USC 112 second paragraph rejections above.

Regarding Claims 1 and 4, Mitchell discloses a device capable of being used by cats and other animals as a resting area and scratching post and comprised of: a real tree (12) which would inherently have real leaves and on which cats could rub their whiskers against; having a padded platform (10) which is flat, horizontal, and elevated above the ground in the tree; the platform being of a size large enough for full grown domestic cats to use for perching or laying down upon; and having a rough and hard texture covering the surface (Figure 4) of the tree capable of use by cats to scratch their claws on.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 5/1 and 5/4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell and as best understood in light of the 35 USC 112 first and second paragraph rejections above.

Regarding Claim 5/1, Mitchell discloses all the claimed features as discussed above including wherein a cord/rope (32) having a rough texture and covers the surface of one or more portions of the tree allowing cats to scratch their claws on (Figure 4). Mitchell does not disclose simulated leaves attachable to a real tree trunk and/or branches. However, it would be obvious to add simulated branches and leaves to provide camouflage since it is old and well known to do so in the hunting field.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Mitchell by adding simulated leaves attachable to a real tree trunk and/or branches in order to provide camouflage during winter months when foliage is sparse. Further, the use of such elements is old and well known and well within the level of skill of one in the art.

Response to Arguments

Applicant's arguments with respect to claims 1 and 4-5 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the drawings please see the attached PYO-form PTO-948 which shows the problems as identified by the Official Draftsperson for the Office. As to comparing the quality of the drawings in the instant application to DE 20115866U1, these drawings were allowed by the German Patent Office and were not subject to review by the USPTO.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Moore (3,392,802), Lawson (3,762,502), Butler (3,949,835), Williams (4,057,031), Wells (4,139,080), Maxwell (4,605,097), Trelkeld (4,730,699), Turner (4,759,425), Mitchell (Des. 334,254), Mitchell (Des. 334,637), Mullin (5,295,556), Bodrie (Des. 350, 399), Hertel et al. (5,427,201), Northrop et al. (Des. 366,736), Kemp (5,501,178), Popowych et al. (5,787,649) and Consell, III (5,809,933).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-

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305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski
Patent Examiner
Art Unit 3643

JMO

A handwritten signature in black ink, appearing to read 'Peter M. Poon', with a stylized, flowing script.

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600